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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B5

DATE: MAY 17 2012 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an assistant professor and/or research position to "promote knowledge and understanding of students in public administration, public policy, organizational behavior and nonprofit management." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a personal statement.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien (or corresponding sections of ETA Form 9089), in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the

national interest waiver. The director, however, did not raise this issue. The AAO will, therefore, review the matter on the merits rather than leave it at a finding that the petitioner did not properly apply for the waiver.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 18, 2011. In an accompanying statement, the petitioner described his goals and his recent work:

> My major goal in life is to contribute to knowledge and understanding of health, social and political issues. I intend to accomplish this goal through research and teaching. . . . My current research focuses on the dynamics of collaborative public policy initiatives, specifically, on the implementation and evaluation of health and sustainable development at the local, state and national levels. . . .
>
> My recent academic research explores the implementation of th[redacted]CARE Act as it relates to efforts toward addressing HIV/AIDS in the U.S. The study use collaborative governance concept to underscore its promising alternative to traditional management in addressing the complex AIDS problem by drawing on the experiences of two HIV Health Services Planning Councils in South Florida. The study highlights how critical facilitative leadership, institutional design, trust building, commitment to the process, shared understanding, consensus and empowerment are to generating outputs and outcomes for collective problem solving. . . .
>
> The study has been converted into a book and is the first major book in the U.S. on [the] Ryan White CARE Act and collaborative efforts of HIV Health Services Planning Councils in addressing the HIV/AIDS conundrum in the U.S. The book is an enlightening read for policymakers, advocates, scholars, students and practitioners of public and health administration. Besides the book, one (1) of my manuscripts on HIV/AIDS has been accepted for publication by a reputable peer reviewed journal, and five (5) other manuscripts on relevant topics are currently under review.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, the petitioner cannot simply declare his book to be a "major book." The petitioner did not submit sales figures or other data to show that the book has attracted significant attention; he showed only that the book exists. On a similar note, the petitioner claimed that his book is "an enlightening read for policymakers" but he must show that policymakers have, in fact, read his book, with resulting influence on public policy.

The publisher of the petitioner's book is [redacted] Information in the petitioner's book indicates that the publisher "offers free of charge publication of current academic research papers, Bachelor's Theses, Master's Theses, Dissertations or Scientific Monographs." In the "Acknowledgments" section at the beginning of the book, the petitioner referred to "graduate studies" and his "dissertation," and the title of the petitioner's doctoral dissertation is the same as the title of the book. It appears that the petitioner submitted his dissertation to what amounts to a print-to-order "vanity press." Publication in this

manner does not automatically undermine the dissertation, but it does not give any reason to infer widespread distribution of the title or conclude that it is a "major book" as the petitioner claims.

The publisher claimed high content standards, but the back cover of the book contains numerous errors in the use and spacing of punctuation. An illustrative excerpt follows, with punctuation and spacing reproduced exactly from the original:

> . . . collective decision making and/or implementation.The somewhat limited stakeholder participation in the policy process,especially,that of target populations,can impact generating viable solutions to complex problems.This book uses collaborative governance concept to underscore its promising alternative. . . .

Much of the language on the back cover blurb appears verbatim in the introductory letter submitted with the petition.

The petitioner also claimed to have "I have made some remarkable contributions to efforts of governmental and nongovernmental organizations," including Ohio University and the United Nations. The only evidence the petitioner submits in this regard is in the form of several certificates. A March 28, 2005 certificate from the United Nations acknowledged the petitioner's "completion of the United Nations Headquarters 2005 Spring Internship Programme In the Department of Economic and Social Affairs." Completing an internship is not inherently a "remarkable contribution" to the United Nations. The petitioner also claimed to have made a "remarkable contribution" to Ohio University, but the certificate from that entity named him "Employee of the Month . . . for outstanding service and performance in the food service." The petitioner has not shown that this certificate has any greater significance.

Five letters accompanied the petition, all from witnesses involved with the petitioner's doctoral studies at Florida Atlantic University (FAU). [redacted] Administration at FAU, described the petitioner's "useful contributions to the field" but did not demonstrate the petitioner's impact or influence on his field. Instead, Prof. Thai expressed confidence about the future impact of the petitioner's work.

[redacted] stated that the petitioner "demonstrated strong interest and hard working efforts" in the classes that [redacted] taught. [redacted] stated: "While his strong areas of competency are Organization Theory and Behavior, Public Personnel Administration, and Public Management, I think he can teach other relevant courses at undergraduate and graduate MPA levels as well."

[redacted] at FAU's School of Public Administration, stated that the petitioner stood out from other students in the doctoral program and that the petitioner's "dissertation research makes a significant contribution to the literature dealing with the collaborative governance literature, the public management literature, and the policy literature." [redacted] asserted that the petitioner's "rather succinct

research agenda . . . will serve him well once he acquires a faculty/research position within an institution in the U.S."

[redacted], associate professor at [redacted] State University, previously supervised the petitioner's master's studies at Ohio University and later served on the petitioner's dissertation committee at FAU. [redacted] praised the petitioner's graduate work and asserted that he has strong potential for future accomplishments, but did not claim that the petitioner's work has had any real-world impact in his areas of interest.

[redacted] research and development coordinator at the [redacted] Sherriff's Office Bureau of Training and Organizational Development, where the petitioner served as a doctoral research fellow, praised the petitioner's "self-confidence and independence" as well as "his commitment to the improvement of services to juvenile offenders through his research on juvenile justice programs." [redacted] did not explain the broader significance of the petitioner's student work at the bureau.

The witnesses quoted above clearly hold high opinions of the petitioner and his work, but they did not demonstrate that the petitioner's efforts have had any significant effect outside of FAU.

The petitioner submitted copies of letters and electronic mail messages from several universities concerning the petitioner's search for employment in the months before the petition's filing date. Apart from one rejection letter from the University of Denver, none of the correspondence reflects final decisions; some of the letters simply provide instructions on how to apply for a position.

In a request for evidence dated May 23, 2011, the director noted that the petitioner "published a book about HIV/AIDS care and treatment efforts," but indicated no plans "to pursue the research any further." The director requested further evidence to meet the guidelines set forth in *NYSDOT*.

In response, the petitioner submitted copies of previously submitted materials and a copy of a newly-published article, apparently on the same subject as the petitioner's earlier doctoral dissertation. In a new letter, the petitioner stated that his waiver application rests on his "unique ability to promote conceptual understanding and its practical application by explicating the U.S. government efforts in addressing the HIV/AIDS conundrum, particularly, as it relates to the implementation of Ryan White CARE Act at the various locales." While this work provided the basis for the petitioner's dissertation and his new article, it appears to be rather a narrow focus for his career as a whole.

The petitioner listed nine "major achievements," including his newly-published article. The article did not appear until several months after the petitioner filed the petition, and the petitioner submitted no evidence to show that the article constitutes a "major achievement." The petitioner observed that other manuscripts are under review; any comment on their significance would clearly be premature.

In response to the director's observation that the petitioner has not shown any citation of his published work, the petitioner stated: "It is somewhat unfair to demand citations for an emergent theory . . . , especially, when the publications are so recent." The petitioner failed to offer an

alternative means by which to objectively gauge the significance of his work. The petitioner persuasively asserted that HIV/AIDS represents a serious problem, but this addresses the intrinsic merit and national scope of the petitioner's work rather than the impact and influence of his individual contributions.

Another "major achievement" is the petitioner's book, already discussed. The petitioner stated that a "Google search of [his] book suggests it is being patronized in North America, Europe, Africa, and beyond: even Yale School of Medicine/Yale University purchased a copy as part of their medical collection because of the book's usefulness." The petitioner did not support these assertions with a printout of the "Google search" or any evidence from Yale University that confirmed not only the university's purchase of the book, but also the university's specific motivation for doing so (which the petitioner claimed to know).

The petitioner also listed various past projects that he undertook while he was a graduate student, and stated that he "[c]o-founded and managed a nonprofit organization that facilitated the creation of viable communities with sustainable suburban economy in the Lower Volta basin." The petitioner did not explain how this is directly relevant to his intended employment in academia.

The petitioner asserted that he intends to apply his "HIV/AIDS collaborative governance conceptual model" in 22 "Eligible Metropolitan Areas" in 14 states. The petitioner did not establish what inroads, if any, he has made with authorities in those areas, an important omission because he is not in a position to decide, single-handedly, whether to implement those models. The record shows that the petitioner has sought a university faculty position, but he has not explained how such a position would enable him to implement his collaborative governance conceptual model throughout the United States.

The director denied the petition on June 24, 2011, acknowledging the intrinsic merit and national scope of the petitioner's occupation but finding that the evidence fails to establish the petitioner's influence on his field. The director found that the petitioner established the general usefulness of his research but did not show how it is, therefore, in the national interest to waive the job offer/labor certification requirement.

On appeal, the petitioner states that his book "draws attention to constructive and enviable U.S. government efforts in tackling the AIDS pandemic." The petitioner, however, fails to show how his book has drawn attention to the subject, or that the previous lack of such a book had been a significant impediment to past government efforts or to the public understanding thereof. The petitioner states that his "ongoing independent research projects on HIV/AIDS and public procurement . . . greatly contribute to knowledge and understanding of U.S. government's care and treatment efforts, particularly, in understanding how resources are being used."

In a similar vein, the petitioner states that his "project on Public Procurement at the FAU Public Procurement Research Center/National Institute of Government Purchasing . . . is critical to scholarly and practical efforts on public procurement in the U.S. and globally," but fails to explain

how this is the case. The petitioner cannot simply identify his areas of research interest and declare his efforts to be "critical" or otherwise important.

The petitioner had originally stated that he would continue to contribute to the national interest by serving as a university faculty member, and his initial submission documented his extensive efforts to secure employment at various institutions. On appeal, the petitioner does not disclose the outcome of those efforts, stating instead that he intends to benefit the United States "through constructive independent efforts." The petitioner states that his research is ongoing, but he does not elaborate or submit any evidence to show the current status of his research efforts.

The record shows the petitioner to be an ambitious researcher with a sincere desire to benefit the United States through his work in public policy. The record, however, does not establish that the petitioner's existing work in the field has significantly distinguished him from others in the same specialty. The petitioner cannot show the importance of his achievements simply by listing them, and many of the petitioner's claims about his work simply lack credible support in the record.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.